

Union Calendar No. 159

112TH CONGRESS
1ST SESSION

H. R. 2349

[Report No. 112-241]

To amend title 38, United States Code, to direct the Secretary of Veterans Affairs to annually assess the skills of certain employees and managers of the Veterans Benefits Administration, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 2011

Mr. RUNYAN introduced the following bill; which was referred to the
Committee on Veterans' Affairs

OCTOBER 6, 2011

Additional sponsor: Mr. BILIRAKIS

OCTOBER 6, 2011

Reported with amendments, committed to the Committee of the Whole House
on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

A BILL

To amend title 38, United States Code, to direct the Secretary of Veterans Affairs to annually assess the skills of certain employees and managers of the Veterans Benefits Administration, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Veterans’ Benefits
 5 Training Improvement Act of 2011”.

6 **SEC. 2. ANNUAL ASSESSMENT OF CLAIMS PROCESSING**
 7 **SKILLS.**

8 (a) IN GENERAL.—Subchapter H of chapter 77 of
 9 title 38, United States Code, is amended by inserting after
 10 section 7732A the following new section:

11 **“§ 7732B. Annual assessment of claims processing**
 12 **skills**

13 “(a) IN GENERAL.—The Secretary shall—

14 “(1) annually assess the skills of appropriate
 15 employees and managers of the Veterans Benefits
 16 Administration who are responsible for processing
 17 claims for compensation and pension benefits under
 18 the laws administered by the Secretary; and

19 “(2) develop and implement an individualized
 20 training plan related to such skills for each such em-
 21 ployee and manager.

22 “(b) REMEDIATION OF DEFICIENT SKILLS.—(1) In
 23 providing training under subsection (a)(2), if any em-
 24 ployee or manager receives a less than satisfactory result
 25 on any portion of an assessment under subsection (a)(1),

1 the Secretary shall provide such employee or manager with
 2 remediation of any deficiency in the skills related to such
 3 portion of the assessment.

4 “(2) In accordance with this title and title 5, the Sec-
 5 retary shall take appropriate disciplinary actions with re-
 6 spect to any employee or manager who, after being given
 7 two opportunities for remediation under paragraph (1),
 8 does not receive a satisfactory result on an assessment
 9 under subsection (a)(1).

10 “(c) ANNUAL REPORT.—Not later than March 1 of
 11 each year, the Secretary shall submit to the Committee
 12 on Veterans’ Affairs of the House of Representatives and
 13 the Committee on Veterans’ Affairs of the Senate a report
 14 on the assessments and training conducted under this sec-
 15 tion during the previous year, including a summary of—

16 “(1) the results of the assessments under sub-
 17 section (a)(1);

18 “(2) remediation provided under subsection
 19 (b)(1); and

20 “(3) disciplinary action taken under subsection
 21 (b)(2).”.

22 (b) CLERICAL AMENDMENT.—The table of sections
 23 at the beginning of such chapter is amended by inserting
 24 after the item relating to section 7732A the following new
 25 item:

“7732B. Annual assessment of claims processing skills.”.

1 ~~(e) IMPLEMENTATION.—The Secretary of Veterans~~
 2 ~~Affairs shall implement section 7732B of title 38, United~~
 3 ~~States Code, as added by subsection (a), by not later than~~
 4 ~~180 days after the date of the enactment of this Act.~~

5 **SECTION 1. SHORT TITLE.**

6 *This Act may be cited as the “Veterans’ Benefits Act*
 7 *of 2011”.*

8 **SEC. 2. ASSESSMENT OF CLAIMS-PROCESSING SKILLS**
 9 **PILOT PROGRAM.**

10 *(a) PILOT PROGRAM.—Commencing not later than*
 11 *180 days after the date of the enactment of the Act, in addi-*
 12 *tion to providing employee certification under section*
 13 *7732A of title 38, United States Code, the Secretary of Vet-*
 14 *erans Affairs shall carry out a pilot program to assess skills*
 15 *and provide training described under subsection (b).*

16 *(b) BIENNIAL SKILLS ASSESSMENT AND INDIVIDUAL-*
 17 *IZED TRAINING.—*

18 *(1) IN GENERAL.—The Secretary shall—*

19 *(A) biennially assess the skills of appro-*
 20 *priate employees and managers of the Veterans*
 21 *Benefits Administration who are responsible for*
 22 *processing claims for compensation and pension*
 23 *benefits under the laws administered by the Sec-*
 24 *retary, including by requiring such employees*
 25 *and managers to take the examination provided*

1 *under section 7732A(a)(1) of title 38, United*
2 *States Code; and*

3 *(B) on the basis of the results of such assess-*
4 *ment and examination, and on any relevant re-*
5 *gional office quality review, develop and imple-*
6 *ment an individualized training plan related to*
7 *such skills for each such employee and manager.*

8 *(2) REMEDIATION.—*

9 *(A) REMEDIATION PROVIDED.—In pro-*
10 *viding training under paragraph (1)(B), if any*
11 *employee or manager receives a less than satis-*
12 *factory result on any portion of an assessment*
13 *under paragraph (1)(A), the Secretary shall pro-*
14 *vide such employee or manager with remediation*
15 *of any deficiency in the skills related to such*
16 *portion of the assessment and, within a reason-*
17 *able period following the remediation, shall re-*
18 *quire the employee or manager to take the exam-*
19 *ination again.*

20 *(B) PERSONNEL ACTIONS.—In accordance*
21 *with titles 5 and 38, United States Code, the*
22 *Secretary shall take appropriate personnel ac-*
23 *tions with respect to any employee or manager*
24 *who, after being given two opportunities for re-*
25 *mediation under subparagraph (A), does not re-*

1 *ceive a satisfactory result on an assessment*
2 *under paragraph (1)(A).*

3 *(c) LOCATIONS AND DURATION.—The Secretary shall*
4 *carry out the pilot program under this section at five re-*
5 *gional offices of the Veterans Benefits Administration dur-*
6 *ing the four-year period beginning on the date of the com-*
7 *mencement of the pilot program.*

8 *(d) AUTHORIZATION OF APPROPRIATIONS.—There is*
9 *authorized to be appropriated to carry out this section a*
10 *total of \$5,000,000 for fiscal years 2012 through 2016.*

11 *(e) REPORTS.—Not later than November 1 of each year*
12 *in which the pilot program under this section is carried*
13 *out, the Secretary shall submit to the Committee on Vet-*
14 *erans' Affairs of the House of Representatives and the Com-*
15 *mittee on Veterans' Affairs of the Senate a report on any*
16 *assessments and training conducted under this section dur-*
17 *ing the previous year. Each such report shall include—*

18 *(1) a summary of—*

19 *(A) the results of the assessments under sub-*
20 *section (b)(1)(A);*

21 *(B) remediation provided under subsection*
22 *(b)(2)(A); and*

23 *(C) personnel actions taken under sub-*
24 *section (b)(2)(B); and*

1 (2) *any changes made to the training program*
 2 *under subsection (b)(1)(B) based on the results of such*
 3 *assessments and remediation and the examinations*
 4 *provided under section 7732A(a)(1) of title 38, United*
 5 *States Code.*

6 **SEC. 3. EXCLUSION OF CERTAIN REIMBURSEMENTS OF EX-**
 7 **PENSES FROM DETERMINATION OF ANNUAL**
 8 **INCOME WITH RESPECT TO PENSIONS FOR**
 9 **VETERANS AND SURVIVING SPOUSES AND**
 10 **CHILDREN OF VETERANS.**

11 (a) *IN GENERAL.*—Paragraph (5) of section 1503(a)
 12 *of title 38, United States Code, is amended to read as fol-*
 13 *lows:*

14 “(5) *payments regarding—*

15 “(A) *reimbursements of any kind (including*
 16 *insurance settlement payments) for—*

17 “(i) *expenses related to the repayment,*
 18 *replacement, or repair of equipment, vehi-*
 19 *cles, items, money, or property resulting*
 20 *from—*

21 “(I) *any accident (as defined in*
 22 *regulations which the Secretary shall*
 23 *prescribe), but the amount excluded*
 24 *under this subclause shall not exceed*
 25 *the greater of the fair market value or*

1 *reasonable replacement value of the*
2 *equipment or vehicle involved at the*
3 *time immediately preceding the acci-*
4 *dent;*

5 “(II) *any theft or loss (as defined*
6 *in regulations which the Secretary*
7 *shall prescribe), but the amount ex-*
8 *cluded under this subclause shall not*
9 *exceed the greater of the fair market*
10 *value or reasonable replacement value*
11 *of the item or the amount of the money*
12 *(including legal tender of the United*
13 *States or of a foreign country) involved*
14 *at the time immediately preceding the*
15 *theft or loss; or*

16 “(III) *any casualty loss (as de-*
17 *fined in regulations which the Sec-*
18 *retary shall prescribe), but the amount*
19 *excluded under this subclause shall not*
20 *exceed the greater of the fair market*
21 *value or reasonable replacement value*
22 *of the property involved at the time*
23 *immediately preceding the casualty*
24 *loss; and*

1 “(ii) *medical expenses resulting from*
2 *any accident, theft, loss, or casualty loss (as*
3 *defined in regulations which the Secretary*
4 *shall prescribe), but the amount excluded*
5 *under this clause shall not exceed the costs*
6 *of medical care provided to the victim of the*
7 *accident, theft, loss, or casualty loss; and*

8 “(B) *pain and suffering (including insur-*
9 *ance settlement payments and general damages*
10 *awarded by a court) related to an accident, theft,*
11 *loss, or casualty loss, but the amount excluded*
12 *under this subparagraph shall not exceed an*
13 *amount determined by the Secretary on a case-*
14 *by-case basis;”.*

15 (b) *EFFECTIVE DATE.*—*The amendment made by sub-*
16 *section (a) shall take effect on the date that is one year after*
17 *the date of the enactment of this Act.*

18 (c) *EXTENSION OF AUTHORITY TO OBTAIN CERTAIN*
19 *INFORMATION FROM DEPARTMENT OF TREASURY.*—*Section*
20 *5317(g) of title 38, United States Code, is amended by strik-*
21 *ing “2011” and inserting “2013”.*

1 **SEC. 4. AUTHORIZATION OF USE OF ELECTRONIC COMMU-**
2 **NICATION TO PROVIDE NOTICE TO CLAIM-**
3 **ANTS FOR BENEFITS UNDER LAWS ADMINIS-**
4 **TERED BY THE SECRETARY OF VETERANS AF-**
5 **FAIRS.**

6 (a) *IN GENERAL.*—Section 5103 of title 38, United
7 States Code, is amended—

8 (1) *in subsection (a)(1)—*

9 (A) *by striking “Upon receipt of a complete*
10 *or substantially complete application, the” and*
11 *inserting “The”;*

12 (B) *by striking “notify” and inserting*
13 *“provide to”; and*

14 (C) *by inserting “by the most effective*
15 *means available, including electronic commu-*
16 *nication or notification in writing” before “of*
17 *any information”; and*

18 (2) *in subsection (b), by adding at the end the*
19 *following new paragraphs:*

20 “(4) *Nothing in this section shall require the Secretary*
21 *to provide notice for a subsequent claim that is filed while*
22 *a previous claim is pending if the notice previously pro-*
23 *vided for such pending claim—*

24 “(A) *provides sufficient notice of the information*
25 *and evidence necessary to substantiate such subse-*
26 *quent claim; and*

1 “(B) was sent within one year of the date on
2 which the subsequent claim was filed.

3 “(5)(A) This section shall not apply to any claim or
4 issue where the Secretary may award the maximum benefit
5 in accordance with this title based on the evidence of record.

6 “(B) For purposes of this paragraph, the term ‘max-
7 imum benefit’ means the highest evaluation assignable in
8 accordance with the evidence of record, as long as such eval-
9 uation is supported by such evidence of record at the time
10 the decision is rendered.”.

11 (b) CONSTRUCTION.—Nothing in the amendments
12 made by subsection (a) shall be construed as eliminating
13 any requirement with respect to the contents of a notice
14 under section 5103 of such title that are required under reg-
15 ulations prescribed pursuant to subsection (a)(2) of such
16 section as of the date of the enactment of this Act.

17 **SEC. 5. DUTY TO ASSIST CLAIMANTS IN OBTAINING PRI-**
18 **VATE RECORDS.**

19 (a) IN GENERAL.—Section 5103A(b) of title 38,
20 United States Code, is amended to read as follows:

21 “(b) ASSISTANCE IN OBTAINING PRIVATE RECORDS.—
22 (1) As part of the assistance provided under subsection (a),
23 the Secretary shall make reasonable efforts to obtain rel-
24 evant private records.

1 “(2)(A) Whenever the Secretary, after making such
2 reasonable efforts, is unable to obtain all of the relevant
3 records sought, the Secretary shall notify the claimant that
4 the Secretary is unable to obtain records with respect to
5 the claim. Such a notification shall—

6 “(i) identify the records the Secretary is unable
7 to obtain;

8 “(ii) briefly explain the efforts that the Secretary
9 made to obtain such records; and

10 “(iii) explain that the Secretary will decide the
11 claim based on the evidence of record but that this
12 section does not prohibit the submission of records at
13 a later date if such submission is otherwise allowed.

14 “(B) The Secretary shall make not less than two re-
15 quests to a custodian of a private record in order for an
16 effort to obtain relevant private records to be treated as rea-
17 sonable under this section, unless it is made evident by the
18 first request that a second request would be futile in obtain-
19 ing such records.

20 “(3)(A) This section shall not apply if the evidence of
21 record allows for the Secretary to award the maximum ben-
22 efit in accordance with this title based on the evidence of
23 record.

24 “(B) For purposes of this paragraph, the term ‘max-
25 imum benefit’ means the highest evaluation assignable in

1 *accordance with the evidence of record, as long as such eval-*
2 *uation is supported by such evidence of record at the time*
3 *the decision is rendered.*

4 “(4) *Under regulations prescribed by the Secretary, the*
5 *Secretary—*

6 “(A) *shall encourage claimants to submit rel-*
7 *evant private medical records of the claimant to the*
8 *Secretary if such submission does not burden the*
9 *claimant; and*

10 “(B) *in obtaining relevant private records under*
11 *paragraph (1), may require the claimant to authorize*
12 *the Secretary to obtain such records if such authoriza-*
13 *tion is required to comply with Federal, State, or*
14 *local law.”.*

15 (b) *PUBLIC RECORDS.—Section 5103A(c) of such title*
16 *is amended to read as follows:*

17 “(c) *OBTAINING RECORDS FOR COMPENSATION*
18 *CLAIMS.—(1) In the case of a claim for disability com-*
19 *pensation, the assistance provided by the Secretary under*
20 *this section shall include obtaining the following records if*
21 *relevant to the claim:*

22 “(A) *The claimant’s service medical records and,*
23 *if the claimant has furnished the Secretary informa-*
24 *tion sufficient to locate such records, other relevant*
25 *records pertaining to the claimant’s active military,*

1 *naval, or air service that are held or maintained by*
 2 *a governmental entity.*

3 *“(B) Records of relevant medical treatment or*
 4 *examination of the claimant at Department health-*
 5 *care facilities or at the expense of the Department, if*
 6 *the claimant furnishes information sufficient to locate*
 7 *those records.*

8 *“(C) Any other relevant records held by any Fed-*
 9 *eral department or agency that the claimant ade-*
 10 *quately identifies and authorizes the Secretary to ob-*
 11 *tain.*

12 *“(2) Whenever the Secretary attempts to obtain records*
 13 *from a Federal department or agency under this subsection,*
 14 *the efforts to obtain those records shall continue until the*
 15 *records are obtained unless it is reasonably certain that*
 16 *such records do not exist or that further efforts to obtain*
 17 *those records would be futile.”.*

18 **SEC. 6. CONDITIONS FOR TREATMENT OF CERTAIN PER-**
 19 **SONS AS ADJUDICATED MENTALLY INCOM-**
 20 **PETENT FOR CERTAIN PURPOSES.**

21 *(a) IN GENERAL.—Chapter 55 of title 38, United*
 22 *States Code, is amended by adding at the end the following*
 23 *new section:*

1 **“§ 5511. Conditions for treatment of certain persons as**
 2 **adjudicated mentally incompetent for cer-**
 3 **tain purposes**

4 *“In any case arising out of the administration by the*
 5 *Secretary of laws and benefits under this title, a person who*
 6 *is mentally incapacitated, deemed mentally incompetent, or*
 7 *experiencing an extended loss of consciousness shall not be*
 8 *considered adjudicated as a mental defective under sub-*
 9 *section (d)(4) or (g)(4) of section 922 of title 18 without*
 10 *the order or finding of a judge, magistrate, or other judicial*
 11 *authority of competent jurisdiction that such person is a*
 12 *danger to himself or herself or others.”.*

13 (b) *CLERICAL AMENDMENT.—The table of sections at*
 14 *the beginning of chapter 55 of such title is amended by add-*
 15 *ing at the end the following new item:*

“5511. Conditions for treatment of certain persons as adjudicated mentally incom-
petent for certain purposes.”.

16 **SEC. 7. REINSTATEMENT OF PENALTIES FOR CHARGING**
 17 **VETERANS UNAUTHORIZED FEES.**

18 (a) *IN GENERAL.—Section 5905 of title 38, United*
 19 *States Code, is amended to read as follows:*

20 **“§ 5905. Penalty for certain acts**

21 *“Except as provided in section 5904 or 1984 of this*
 22 *title, whoever—*

23 *“(1) in connection with a proceeding before the*
 24 *Department, knowingly solicits, contracts for, charges,*

1 or receives any fee or compensation in connection
2 for—

3 “(A) the provision of advice on how to file
4 a claim for benefits under the laws administered
5 by the Secretary; or

6 “(B) the preparation, presentation, or pros-
7 ecution of such a claim before the date on which
8 a notice of disagreement is filed in a proceeding
9 on the claim,
10 or attempts to do so;

11 “(2) unlawfully withholds from any claimant or
12 beneficiary any part of a benefit or claim under the
13 laws administered by the Secretary that is allowed
14 and due to the claimant or beneficiary, or attempts
15 to do so;

16 “(3) commits an offense punishable by this chap-
17 ter, or aids, abets, counsels, commands, or procures
18 the commission of such an act; or

19 “(4) causes an act to be done, which if directly
20 performed would be punishable by this chapter,

21 shall be fined as provided in title 18, or imprisoned for
22 not more than one year, or both.”.

23 (b) *EFFECTIVE DATE.*—The amendment made by sub-
24 section (a) shall apply with respect to acts committed after
25 the date of the enactment of this Act.

1 **SEC. 8. PERFORMANCE AWARDS IN THE SENIOR EXECUTIVE**
2 **SERVICE.**

3 *For each of fiscal years 2012 through 2016, the Sec-*
4 *retary of Veterans Affairs may not pay more than*
5 *\$2,000,000 in performance awards under section 5384 of*
6 *title 5, United States Code.*

7 **SEC. 9. BUDGETARY EFFECTS OF THIS ACT.**

8 *The budgetary effects of this Act, for the purpose of*
9 *complying with the Statutory Pay-As-You-Go-Act of 2010,*
10 *shall be determined by reference to the latest statement titled*
11 *“Budgetary Effects of PAYGO Legislation” for this Act,*
12 *submitted for printing in the Congressional Record by the*
13 *Chairman of the House Budget Committee, provided that*
14 *such statement has been submitted prior to the vote on pas-*
15 *sage.*

Amend the title so as to read: “A bill to amend title 38, United States Code, to improve the determination of annual income with respect to pensions for certain veterans, to direct the Secretary of Veterans Affairs to establish a pilot program to assess the skills of certain employees and managers of the Veterans Benefits Administration, and for other purposes.”.

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A BILL

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